

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Milton I. Shadur	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	04 C 4165	DATE	9/30/2004
CASE TITLE	Pamela Morris vs. Household Mortgage Services		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

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DOCKET ENTRY:

(1)	<input type="checkbox"/>	Filed motion of [use listing in "Motion" box above.]
(2)	<input type="checkbox"/>	Brief in support of motion due _____.
(3)	<input type="checkbox"/>	Answer brief to motion due _____. Reply to answer brief due _____.
(4)	<input type="checkbox"/>	Ruling/Hearing on _____ set for _____ at _____.
(5)	<input type="checkbox"/>	Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(6)	<input type="checkbox"/>	Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(7)	<input type="checkbox"/>	Trial[set for/re-set for] on _____ at _____.
(8)	<input type="checkbox"/>	[Bench/Jury trial] [Hearing] held/continued to _____ at _____.
(9)	<input type="checkbox"/>	This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to] <input type="checkbox"/> FRCP4(m) <input type="checkbox"/> Local Rule 41.1 <input type="checkbox"/> FRCP41(a)(1) <input type="checkbox"/> FRCP41(a)(2).
(10)	<input checked="" type="checkbox"/>	[Other docket entry] Enter Memorandum Order. Household's motion to dismiss count IV is granted. (12-1) Plaintiff's request to voluntary dismiss Count II is granted.
(11)	<input checked="" type="checkbox"/>	[For further detail see order attached to the original minute order.]

<input type="checkbox"/> No notices required, advised in open court. <input type="checkbox"/> No notices required. <input checked="" type="checkbox"/> Notices mailed by judge's staff. <input type="checkbox"/> Notified counsel by telephone. <input type="checkbox"/> Docketing to mail notices. <input type="checkbox"/> Mail AO 450 form. <input type="checkbox"/> Copy to judge/magistrate judge.	SN courtroom deputy's initials	U.S. DISTRICT COURT 2004 SEP 30 PM 2:18	number of notices	Document Number 17
			OCT 01 2004 date docketed	
			[Signature] docketing deputy initials	
			9/30/2004 date mailed notice	
			SN mailing deputy initials	
		Date/time received in central Clerk's Office		

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

PAMELA MORRIS, et al.,)	
)	
Plaintiffs,)	
)	
v.)	No. 04 C 4165
)	
HOUSEHOLD MORTGAGE SERVICES, INC.,)	
et al.,)	
)	
Defendants.)	

DOCKETED
OCT 01 2004

MEMORANDUM ORDER

Remaining defendant Household Finance Corporation III ("Household," mistakenly sued in the name of a now-dissolved predecessor corporation, Household Mortgage Services, Inc.) has filed a motion to dismiss Counts II and IV of the Complaint brought against it by Pamela Morris ("Morris") and Lloyd Brooks ("Brooks"). Because the just-filed Morris-Brooks response to that motion has chosen to dismiss Count II, thus mooted Household's motion in that respect, this memorandum order will address only Count IV.

That count asserts a common-law claim that sounds in defamation. Although Household calls upon Section 624(b)(1)(F) of the Fair Credit Reporting Act ("Act"),¹ for their part Morris and Brooks respond by pointing to the more particularized

¹ This order follows the parties' lead in citing to the internal section numbering of the Act, rather than to the Title 15 numbering. If the latter form of citation were employed instead, the just-cited provision would be cited as "Section 1681t(b)(1)(F)."

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provision of Section 610(e), which prohibits any consumer action "in the nature of defamation" but contains an express exception "as to false information furnished with malice or wilful intent to injure such consumer."

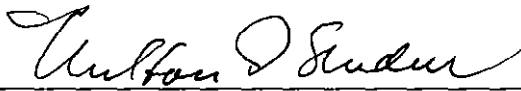
As between those competing contentions, this Court finds the Morris-Brooks position more persuasive, if for no other reason than the general principle of statutory construction under which a more particularized statutory provision prevails over a more general provision in the same statute that looks the other way. But with that said, the problem for Morris and Brooks here is that Count IV does not conform to the terms of the just-quoted exception to the Section 610(e) prohibition. Here is Count IV ¶37, its only allegation that speaks to the issue:

Household's publication of the false information was intentional or done with a reckless disregard for the truth of the matter. Household knew or should have known that the erroneous information would be used by the credit bureaus in the calculation of certain credit scores and that the credit bureaus would disseminate the erroneous information to prospective lenders.

Simply put, an allegation that Household's publication of the assertedly false information "was intentional or done with a reckless disregard for the truth," and a further allegation as to what Household "knew or should have known," simply do not equate to assertions of Household's having furnished the information at issue "with malice or wilful intent to injure."

Accordingly Household's motion to dismiss Complaint Count IV

is granted. And as is always true with respect to any Fed. R. Civ. P. ("Rule") 12(b)(6) motion, if Morris and Brooks were to choose to reshape their allegations to conform to what the law requires, effectively changing the alleged facts to fit the law, they and their counsel would have to be heedful of the objective good faith that Rule 11(b) demands of every litigant and lawyer.²



Milton I. Shadur
Senior United States District Judge

Date: September 30, 2004

² In that respect, it will be interesting to see whether the House of Representatives' current effort to restore the fangs to Rule 11 by reinstating its provisions that antedated the 1993 amendment to that Rule (and, indeed, to add more fangs to the Rule) will prove successful.